

**IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK**

LAMONT B. SIMMONS,)	CASE NO. 08-6263 SCR
MELISSA R. SIMMONS,)	
on behalf of themselves and all)	
others similarly situated,)	
Plaintiffs,)	
)	
VS.)	
)	
Roundup Funding, LLC,)	
Malen & Associates, P.C.)	
)	

Defendants.

**MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO REMOVE CASE TO
BANKRUPTCY COURT AND REQUEST FOR ATTORNEY'S FEES**

Now comes Defendant, Roundup Funding, LLC, ("Roundup") by and through the undersigned counsel, and hereby requests the Court to dismiss Plaintiffs' complaint/amended complaint for lack of subject matter jurisdiction per Fed. R. Civ. P. 12(b)(1), or in the alternative, remove to the pending bankruptcy case, 07-23060, before the Honorable Adlai S. Hardin Jr. ("Bankruptcy Court") pursuant to 28 U.S.C. §1452(a) and §1441(a), and award Roundup attorney's fees pursuant to 15 U.S.C. 1692k. Roundup concurrently submits memorandum in support of this motion. Roundup joins and incorporates by reference all arguments or pleadings presented by Defendant, Malen & Associates, P.C. ("Malen").

The matter should be removed to the pending Bankruptcy Court under Fed. R. Civ. P. 12(b)(1), 28 U.S.C. §1452(a) and §1441(a). The Bankruptcy Court has exclusive subject matter and personal jurisdiction to hear all core bankruptcy proceedings involving claims filed before the Bankruptcy Court per 28 U.S.C. §1334 and 157(b)(2). Also, res judicata and collateral estoppel bar Plaintiffs from pursuing this action against Roundup.

Respectfully Submitted: Appearing Pro Hac Vice:

/s/ Linh K. Tran
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